

March 6, 2007

Withholding Tax-Payments Made to Nonresident Board Directors. NEBRASKA INCOME TAX MUST BE WITHHELD FROM PAYMENTS TO NONRESIDENT DIRECTORS OF A CORPORATE OR OTHER ENTITY BOARD BASED ON ATTENDANCE AT BOARD MEETINGS IN THIS STATE.

Advice has been requested regarding the requirement to withhold Nebraska income tax under Neb. Rev. Stat. 77-2753(2) from nonresident board of director members when board meetings are held both within and without Nebraska. Under section 77-2753(2), payers of compensation must withhold from nonresidents who are not employees but who provide personal services in Nebraska. This includes consultants, entertainers, performers, athletes, public speakers, and those providing other personal services, including service on a corporate or other entity board of directors.

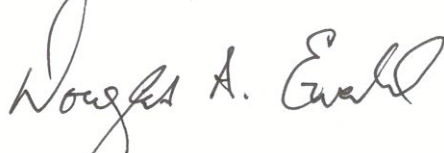
In the case where a corporation holds its regular and/or special board meetings both within and without Nebraska (including via telephonic means allowed by Nebraska or other applicable corporate law) withholding will be calculated by the payer for the nonresident board members as follows:

The total of federally taxable payments to the nonresident board member, including meeting fees and all other fees paid to the director, is multiplied by a fraction. The numerator includes the number of board of director meetings physically attended by the director within Nebraska or via telephonic means when the director is within this state. The denominator includes all the board meetings attended physically or telephonically by the director both within and without Nebraska. Written consents in lieu of meeting attendance are not included in either the numerator or the denominator. The resultant fraction is then applied to the taxable payments made to the nonresident director to determine the portion of income to which the Nebraska withholding tax rates are applied.

The rates of Nebraska withholding on nonresident personal services are 4% on the first \$28,000 of taxable payments and 6% on any excess. Any documented expenses, up to fifty per cent of the payment amounts incurred by the nonresident in providing the services, can be deducted from the payments if directly related to the provision of the service within this state. The 4% rate is to be applied to the Nebraska taxable payments until they surpass the \$28,000 threshold at which point the 6% rate is to be applied.

A reasonable estimate of the Nebraska portion of the director payments may be used to determine the taxable amounts and the tax to withhold from the nonresident director during the year until the actual applicable fraction can be determined at year's end.

APPROVED:



Douglas A. Ewald  
State Tax Commissioner

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